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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13

14 IN RE: TFT-LCD (FLAT PANEL)
ANTITRUST LITIGATION

Case No. MDL 3:07-md-1827 SI

15

16 This Document Relates to:

17 ALL DIRECT PURCHASER ACTIONS

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19
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**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENTS WITH
DEFENDANTS CHIMEI, HANNSTAR,
HITACHI, LG DISPLAY, MITSUI,
SAMSUNG, SANYO AND SHARP;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

21

Date: October 4, 2011

22

Time: 4:00 p.m.

23

Place: Courtroom 10, 19th Floor
The Honorable Susan Illston

NOTICE OF MOTION AND MOTION

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25

PLEASE TAKE NOTICE that on October 4, 2011, at 4:00 p.m., in the Courtroom of the
Honorable Susan Illston, United States District Judge for the Northern District of California,
located at 450 Golden Gate Avenue, San Francisco, California, the Direct Purchaser Class

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MDL 3:07-md-1827 SI

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENTS WITH
DEFENDANTS CHIMEI, HANNSTAR, HITACHI, LG DISPLAY, MITSUI, SAMSUNG, SANYO AND SHARP;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

1 Plaintiffs will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23(e),
2 for entry of an Order:

- 3 1. Preliminarily approving the settlements with the Chimei, HannStar,
4 Hitachi, LG Display, Mitsui, Samsung, Sanyo, and Sharp Defendants;
- 5 2. Directing distribution of notice of the settlements to the Class;
- 6 3. Approving the proposed claim form and preliminarily approving the
7 proposed Plan of Allocation; and,
- 8 4. Setting a schedule for the final settlement approval process.

9 The grounds for this motion are that the proposed Class settlements are within the range of
10 being finally approved as fair, reasonable, and adequate.

11 This motion is based on this Notice of Motion and Motion, the supporting Memorandum of
12 Points and Authorities, the accompanying Declaration of Bruce L. Simon, the LCD Direct-
13 Purchaser Class Settlement Agreements, any papers filed in reply, the argument of counsel, and all
14 papers and records on file in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23, Direct Purchaser Class Plaintiffs ("Plaintiffs") move this Court for an order preliminarily approving Class settlements reached with Defendants Chimei Innolux Corporation, Chi Mei Corporation, Chi Mei Optoelectronics Corporation, CMO Japan Co., Ltd., Chi Mei Optoelectronics USA, Inc., Nexgen Mediatech, Inc., and Nexgen Mediatech USA, Inc. ("Chimei"); HannStar Display Corporation ("HannStar"); Hitachi, Ltd., Hitachi Displays, Ltd., and Hitachi Electronic Devices (USA), Inc. ("Hitachi"); LG Display Co. Ltd. and LG Display America, Inc. ("LG Display"); Mitsui & Co. (Taiwan), Ltd. ("Mitsui"); Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Semiconductor, Inc. ("Samsung"); Sanyo Consumer Electronics Co., Ltd. ("Sanyo"); and Sharp Electronics Corporation and Sharp Corporation ("Sharp") (collectively the "Settling Defendants"). The Settling Defendants are paying a total of \$388,022,242 and will provide cooperation in exchange for a release of the Class Members' claims. Moreover, the Settling Defendants' sales remain in the case for purposes of computing Plaintiffs' treble damages claim against the non-settling defendants (the AUO and Toshiba Defendants).

The Settling Defendants also agree as part of their settlement consideration to cooperate with Plaintiffs by providing certain information, including, depending on each settlement agreement's terms, information and witnesses to authenticate documents, and testimony relating to the existence, scope, and implementation of the alleged conspiracy. The two defendants that settled previously, Chunghwa and Epson, provided cooperation as part of their settlement consideration. This cooperation has proved very valuable in understanding the nature of the alleged conspiracy and the agreements reached to maintain and, at times to increase, TFT-LCD prices and to restrict production. Plaintiffs anticipate that the cooperation of the Settling Defendants will be useful in trying the case against the non-settling defendants.

The question at the preliminary approval stage is whether a settlement is within the range of possible approval to justify sending and publishing notice to the class and scheduling final

1 approval proceedings, and not whether the settlement is fair, reasonable, and adequate. The
 2 settlements here were reached after extensive arm's-length negotiations between experienced and
 3 informed counsel, and easily meet the standard for preliminary approval.

4 Plaintiffs also respectfully request that the Court approve the proposed forms of notice and
 5 claim form submitted herewith, allow no further opt outs from the proposed settlements, and
 6 preliminarily approve the plan of allocation.

7 **II. PROCEDURAL HISTORY**

8 This multidistrict litigation arises from a conspiracy to fix the prices of Thin Film
 9 Transistor-Liquid Crystal Display ("TFT-LCD") products. *See* Declaration of Bruce L. Simon in
 10 Support of Motion for Preliminary Approval of Class Settlement with Defendants Chimei,
 11 Hannstar, Hitachi, LG Display, Mitsui, Samsung, Sanyo, and Sharp ("Simon Decl."), ¶ 3. The
 12 first cases were filed in December 2006. *Id.* The Judicial Panel on Multidistrict Litigation in
 13 April 2007 granted a motion for pretrial coordination pursuant to 28 U.S.C. § 1407 and transferred
 14 all actions to this Court. 483 F. Supp. 2d 1353 (J.P.M.L. 2007).

15 Because of the criminal investigation by the U.S. Department of Justice ("DOJ"), this
 16 Court on September 25, 2007, partially stayed discovery. 2007 WL 2782951 (N.D. Cal. Sept. 25,
 17 2007). Plaintiffs were not allowed access to the documents the Defendants had produced to the
 18 DOJ, to take any depositions, exchange initial disclosures, or propound any discovery requests
 19 regarding the conspiracy's operations, participants, and effects. Plaintiffs were only permitted to
 20 propound limited interrogatories to determine the amount of Defendants' sales and to identify their
 21 officers and executives. Simon Decl., ¶ 3. On May 27, 2008, the Court continued the stay of
 22 merits document discovery until January 9, 2009. (Doc. No. 631.)

23 Defendants moved to dismiss the complaint, twice jointly and several times separately.
 24 Simon Decl., ¶ 4. The Court granted and denied in part the first wave of motions. 586 F. Supp. 2d
 25 1109 (N.D. Cal. 2008). After Plaintiffs re-pled certain aspects of their claims, the Court denied in
 26 total the second wave. 599 F. Supp. 2d 1179 (N.D. Cal. 2009).

27 While the Defendants' motions to dismiss were litigated, Plaintiffs propounded and
 28

1 responded to written discovery. Plaintiffs also met and conferred with each Defendant about
 2 discovery issues, litigated discovery motions, and successfully opposed a writ petition by the
 3 Toshiba Defendants filed with the Ninth Circuit Court of Appeals. Plaintiffs also obtained
 4 information and documents from third-parties and consulted with experts. Simon Decl., ¶ 5.

5 On January 9, 2009, upon the expiration of the discovery stay, Defendants began
 6 producing documents to Plaintiffs they had produced to the DOJ and/or the grand jury. *Id.*, ¶ 6.
 7 The Defendants' document productions have taken place on a rolling basis. Many of the
 8 documents are in Korean, Japanese, and Chinese, and have been loaded into a database, translated,
 9 and analyzed. In addition to the review of documents produced to the grand jury, Plaintiffs
 10 propounded separate production requests and interrogatories to all Defendants. To date, Plaintiffs
 11 have received from Defendants more than 7.8 million documents, totaling over 40 million pages,
 12 which they have loaded onto the electronic database. *Id.* A team of Plaintiffs' counsel continue to
 13 review these documents.

14 On September 17, 2009, Plaintiffs commenced merits depositions. To date, Plaintiffs have
 15 taken more than 70 depositions of Defendants' employees, officers, and corporate designees. *Id.*,
 16 ¶ 7. With respect to the Settling Defendants, Plaintiffs have taken 56 depositions of their
 17 witnesses and reviewed millions of pages of the documents they produced. *Id.*

18 Plaintiffs filed their motion for class certification on April 3, 2009. On March 28, 2010,
 19 the Court certified the two Direct Purchaser classes, one for panel purchasers and the other for
 20 finished product (televisions, notebooks, and monitors) purchasers. 267 F.R.D. 291 (N.D. Cal.
 21 2010). On June 17, 2010, the Ninth Circuit denied Defendants' Federal Rule of Civil Procedure
 22 23(f) petition to appeal. Simon Decl., ¶ 8.

23 Plaintiffs and Defendants are still in the process of exchanging expert reports. The initial
 24 round of reports, served by Plaintiffs on May 25, 2011, were written by Dr. Edward Leamer,
 25 Dr. Kenneth Flamm, and Dr. Adam Fontecchio. All three of Plaintiffs' experts have been
 26 deposed (Dr. Flamm was deposed on June 24, 2011; Dr. Leamer's was deposed on July 8, 2011;
 27 Dr. Fontecchio was deposed on August 3, 2011). On July 22, 2011, two of Defendants' experts,

1 Dr. Dennis Carlton and Dean Edward Snyder, served their separate rebuttal reports. On July 27,
 2 Defendants' expert Kenneth Werner served his rebuttal report. On July 28, 2011,
 3 Defendants' expert Dr. Barry Harris served his rebuttal report. Dean Snyder was deposed on
 4 August 8, 2011, Dr. Carlton was deposed on August 17, 2011, Mr. Werner was deposed on
 5 August 18, 2011, and Dr. Harris was deposed on August 19, 2011. Plaintiffs' experts' reply
 6 reports were served on August 29, 2011. Defendants' experts may serve sur-rebuttal reports by
 7 September 9, 2011 that respond to any argument or modeling newly advanced for the first time by
 8 Plaintiffs in their reply reports. If Plaintiffs' reply reports contain extensive new modeling and
 9 formulas, Defendants shall notify the Special Master and request an extension until September 13,
 10 2011 to serve sur-rebuttal reports. *Id.*, ¶ 9.

11 The trial is scheduled to begin on February 13, 2012. A criminal trial against non-settling
 12 defendant AUO and its executives will begin on November 14, 2011.

13 This is the third motion for preliminary settlement approval that Direct Purchaser Class
 14 Plaintiffs have filed. A joint Notice was published and mailed to notify Class members of those
 15 two prior settlements and the certified litigation classes, and the opt-out period expired on
 16 January 4, 2011. *Id.*, ¶ 10. The Court, on February 18, 2011, granted final approval to the
 17 settlements entered into with the Epson and Chunghwa defendants. (Doc. Nos. 2475 and 2476.)

18 **III. SUMMARY OF SETTLEMENT NEGOTIATIONS**

19 Settlement discussions began as early as March of 2009, as described below. Nine months
 20 later, settlement discussions involving a mediator commenced pursuant to the Court's order that
 21 the first mediation session be completed by February 14, 2011. (See Order Re: Pretrial and Trial
 22 Schedule, Doc. No. 2165.) There was a preliminary mediation session in San Francisco,
 23 conducted by Professor Eric D. Green on January 13, 2011. Professor Green has taught
 24 negotiation, mediation, complex ADR processes, resolution of mass torts, and evidence at Boston
 25 University School of Law. He is Co-Founder and Principal of Resolutions LLC, a mediation,
 26 arbitration, and ADR provider in Boston. Professor Green is one of the most highly respected and
 27 competent mediators in the country. A copy of Professor Green's resume is attached as Exhibit A

28

1 to the Simon Declaration.

2 All Defendants and all Plaintiffs—including Indirect Purchaser Class Plaintiffs and Direct
 3 Action Plaintiffs—attended the initial mediation session. The next sessions took place on
 4 February 15 and 16, 2011 in San Francisco. Thereafter, in March of 2011, a series of mediations
 5 occurred between Plaintiffs and specific Defendants, as described below. Simon Decl., ¶ 11.

6 The settlement negotiations consisted of mediation sessions and multiple telephonic and
 7 face-to-face conferences as well as email messages on an arm's-length and non-collusive basis
 8 among counsel who are experienced in antitrust law and class actions. *Id.*, ¶ 12. Part of the
 9 mediation process included the exchange of commerce information about panels and finished
 10 products in an effort to have an agreed upon basis for negotiations. In some instances, these
 11 commerce numbers were relatively close and in other situations, they were far apart. Moreover,
 12 counsel were assisted in this process by the mediator, who was effective in assisting the parties in
 13 coming to fair and equitable resolutions despite the positions taken by counsel and their clients.

14 *Id.*

15 **A. Settlement Discussions With Chimei.**

16 Settlement negotiations with Chimei's counsel, Christopher Hockett of Davis Polk &
 17 Wardwell LLP, occurred at a mediation session on May 18, 2011. The terms of the settlement
 18 were vigorously negotiated and settlement was reached with the assistance of the mediator. *Id.*, ¶
 19 13. Plaintiffs and Chimei formalized their settlement agreement on July 15, 2011 by signing the
 20 TFT-LCD Direct Purchaser Class Chimei Settlement Agreement (the "Chimei Agreement")
 21 (attached to the Simon Decl. as Exhibit B).

22 **B. Settlement Discussions With HannStar.**

23 Plaintiffs' counsel commenced settlement negotiations with HannStar's counsel, Hugh
 24 Bangasser and Ramona Emerson of K&L Gates, LLP, on February 15 and 16, 2011 at a mediation
 25 session in San Francisco. *Id.*, ¶ 14. The negotiations occurred through several telephone calls and
 26 e-mail messages conducted through the mediator over a number of months. On June 3, 2011,
 27 Plaintiffs and HannStar reached agreement on the principal settlement terms. *Id.* Those terms

1 were vigorously negotiated with the mediator’s assistance. *Id.* Plaintiffs and HannStar formalized
2 their settlement agreement on August 10, 2011 by signing the TFT-LCD Direct Purchaser Class
3 Settlement Agreement (the “HannStar Agreement”) (attached to the Simon Decl. as Exhibit C).

C. Settlement Discussions With Hitachi.

5 Plaintiffs' counsel commenced settlement negotiations with the Hitachi's counsel, Kent
6 Roger of Morgan, Lewis & Bockius, LLP, during a meeting in San Francisco on March 20, 2009.
7 *Id.*, ¶ 15. On June 3, 2010, counsel for Plaintiffs and Hitachi met again in San Francisco. In
8 February, 2011 mediation sessions began with the assistance of Professor Green. Through the
9 continued use of the mediator, on May 22, 2011, Plaintiffs and Hitachi reached an agreement on
10 the principal settlement terms, which were confirmed in a Memorandum of Understanding. *Id.*
11 The terms of the settlement were vigorously negotiated and it took over two months to reach an
12 agreement. *Id.* Plaintiffs and Hitachi signed the TFT-LCD Direct Purchaser Class Settlement
13 Agreement (the "Hitachi Agreement") (attached to the Simon Decl. as Exhibit D) on August 3,
14 2011.

D. Settlement Discussions With LG Display.

16 Plaintiffs' counsel commenced settlement negotiations with counsel for LG Display,
17 Michael Lazerwitz of Cleary, Gottlieb, Steen & Hamilton LLP, in November of 2009. *Id.*, ¶ 16.
18 The first mediation session with Professor Green was on February 15 and 16, 2011. For the next
19 two months Professor Green worked with the parties through multiple telephone calls and e-mails.
20 On April 5, 2011, Plaintiffs and LG Display reached agreement on the principal terms of
21 settlement, subject to the approval of LG Display's Board of Directors. *Id.* The terms of the
22 settlement were vigorously negotiated; it took almost a year and a half for the parties to reach an
23 agreement. *Id.* Plaintiffs and LG Display formalized their settlement agreement on June 13, 2011
24 by signing the TFT-LCD Direct Purchaser Class—LG Display Settlement Agreement (the "LG
25 Display Agreement") (attached to the Simon Decl. as Exhibit E).

E. Settlement Discussions With Mitsui.

27 Plaintiffs' counsel commenced settlement negotiations with Mitsui's counsel, Ernest

1 Vargo and Paul Eyre of Baker Hostetler, in February of 2011. *Id.*, ¶ 17. On February 22, 2011,
 2 Plaintiffs and Mitsui reached agreement on the principal terms of settlement. *Id.* The terms of the
 3 settlement were vigorously negotiated by counsel via telephone and required the assistance of the
 4 mediator. *Id.* Plaintiffs and Mitsui formalized their settlement agreement on August 10, 2011 by
 5 signing the TFT-LCD Direct Purchaser Class Settlement Agreement (the “Mitsui Agreement”)
 6 (attached to the Simon Decl. as Exhibit F).

7 **F. Settlement Discussions With Samsung.**

8 Plaintiffs’ counsel commenced settlement negotiations with the Samsung’s counsel, Robert
 9 Wick of Covington & Burling, LLP, in March of 2011. *Id.*, ¶ 18. There was an initial mediation
 10 session with Samsung on March 3-4, 2011 in San Francisco. On April 11, 2011, Plaintiffs and
 11 Samsung reached agreement on the principal terms of a settlement at a subsequent mediation
 12 session. *Id.* The terms of the settlement were reached after negotiations that were facilitated by
 13 the mediator. *Id.* Plaintiffs and Samsung formalized their settlement agreement on August 10,
 14 2011 by signing the TFT-LCD Direct Purchaser Class—Samsung Settlement Agreement (the
 15 “Samsung Agreement”) (attached to the Simon Decl. as Exhibit G).

16 **G. Settlement Discussions With Sanyo.**

17 Plaintiffs’ counsel commenced settlement negotiations through Professor Green with
 18 counsel for Sanyo, Nick Verwolf and Allison Davis, of Davis Wright Tremaine LLP, in February
 19 of 2011. *Id.*, ¶ 19. With the assistance of Professor Green, on March 31, 2011, Plaintiffs and
 20 Sanyo reached agreement on the principal terms of settlement. *Id.* Plaintiffs and Sanyo
 21 formalized their settlement agreement on August 10, 2011 by signing the TFT-LCD Direct
 22 Purchaser Class Settlement Agreement (the “Sanyo Agreement”) (attached to the Simon Decl. as
 23 Exhibit H).

24 **H. Settlement Discussions With Sharp.**

25 Plaintiffs’ counsel commenced settlement negotiations with Sharp’s counsel, Richard
 26 Taffet of Bingham McCutchen LLP, in June, 2010. *Id.*, ¶ 20. Counsel for Plaintiffs and Sharp
 27 met in San Francisco on June 3, 2010 to discuss settlement. There was a subsequent mediation

1 session with Sharp on March 5 and 6, 2011 in San Francisco. Plaintiffs and Sharp reached an
2 agreement on June 29, 2011, during a mediation session which took place in Boston,
3 Massachusetts. Thus, the settlement negotiations with Sharp lasted well over a year and were
4 vigorously negotiated. *Id.* Plaintiffs and Sharp formalized their settlement agreement on August
5 1, 2011 by signing the TFT-LCD Direct Purchaser Class—Sharp Entities Settlement Agreement
6 (the “Sharp Agreement”) (attached to the Simon Decl. as Exhibit I).

7 | IV. TERMS OF THE SETTLEMENT

A. Consideration.

9 The terms of the proposed class settlements are set forth fully in the separate settlement
10 agreements. (Simon Decl., Exhs. B-I.) Settling Defendants have agreed to pay the following
11 amounts in exchange for dismissals with prejudice and a release of claims:

12 Chimei: \$78,000,000 (Simon Decl., Exh. B, ¶ 7)

13 HannStar: \$14,900,000 (Simon Decl., Exh. C, ¶ 7)

14 Hitachi: \$28,000,000 (Simon Decl., Exh. D, ¶ 7)

15 LG Display: \$75,000,000 (Simon Decl., Exh. E, ¶ 6)

16 Mitsui: \$950,000 (Simon Decl., Exh. F, ¶ 7)

17 Samsung: \$82,672,242 (Simon Decl., Exh. G, ¶ 7)

18 Sanyo: \$3,500,000 (Simon Decl., Exh. H, ¶ 6)

19 Sharp: \$105,000,000 (Simon Decl., Exh. I, ¶ 7)

20 Total: \$388,022,242

Importantly, the settlements require every Settling Defendant to continue to assist Plaintiffs in the prosecution of the case against the remaining Defendants. *See, e.g.*, Simon Decl., Exhs. C, D, F, G, H and I.¹ That cooperation includes, *inter alia*, authenticating documents and producing witnesses for trial, depositions, and/or interviews.

²⁶ ¹ See, e.g., HannStar Agreement, Exh. C at ¶ 25; Hitachi Agreement, Exh. D at ¶¶ 25-28; Mitsui
Agreement, Exh. F at ¶¶ 25-27; Samsung Agreement, Exh. G at ¶¶ 25-27; Sanyo Agreement, Exh.
²⁷ H at ¶ 24; and, Sharp Agreement, Exh. I at ¶ 25.

1 **B. Release.**

2 Upon final approval of the settlements, Plaintiffs and class members will release all claims
 3 they have against the Settling Defendants “concerning the manufacture, supply, distribution, sale
 4 or pricing of TFT-LCD products up to the date of execution” of the Agreements. *Id.*, at ¶ 14 of
 5 Exhs. B, C, D, F and I; and, at ¶ 13 of Exhs. E and H. However, the release does not include
 6 claims arising from the sale of TFT-LCD panels or finished products by other defendants, or their
 7 co-conspirators, including those that contain the Settling Defendants’ TFT-LCD panels. *Id.*
 8 Further, the release does not include claims for product defects, personal injury, or breach of
 9 contract. *Id.*, at ¶ 16 of Exhs. B, C, D, F, G; and, at ¶ 15 of Exhs. E and H.

10 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS**

11 **A. Class Action Settlement Procedure.**

12 A class action may not be dismissed, compromised, or settled without the approval of the
 13 Court. Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined
 14 procedure and specific criteria for class action settlement approval. The Rule 23(e) settlement
 15 approval procedure includes three distinct steps:

16 1. Preliminary approval of the proposed settlements;
 17 2. Dissemination of notice of the settlements to all affected class members;

18 and

19 3. A formal fairness hearing, also called the final approval hearing, at which
 20 class members may be heard regarding the settlements, and at which counsel may introduce
 21 evidence and present argument concerning the fairness, adequacy, and reasonableness of the
 22 settlements.

23 This procedure safeguards class members’ due process rights and enables the Court to
 24 fulfill its role as the guardian of class interests. *See* 4 Newberg on Class Actions §§ 11.22, et seq.
 25 (4th ed. 2002) (“Newberg”).

26 By way of this motion, the parties request that the Court take the first step in the settlement
 27 approval process and preliminarily approve the proposed settlements. As the Court previously

28

1 certified the classes which are now being settled, and appointed representative plaintiffs and class
 2 counsel, it need not certify settlement classes or make any appointments.

3 **B. Standards For Settlement Approval.**

4 Rule 23(e) requires court approval of any settlement of claims brought on a class basis.
 5 “[T]here is an overriding public interest in settling and quieting litigation . . . particularly . . . in
 6 class action suits which are now an ever increasing burden to so many federal courts and which
 7 frequently present serious problems of management and expense.” *Van Bronkhorst v. Safeco*
 8 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); see also *Churchill Village, L.L.C. v. General Elec.*,
 9 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir.
 10 1995); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The purpose of the
 11 Court’s preliminary evaluation of the proposed settlement is to determine whether it is within “the
 12 range of reasonableness,” and thus whether notice to the Class of the terms and conditions of the
 13 settlement, and the scheduling of a formal fairness hearing, are worthwhile. Preliminary approval
 14 should be granted where “the proposed settlement appears to be the product of serious, informed,
 15 non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential
 16 treatment to class representatives or segments of the class and falls within the range of possible
 17 approval.” *In re NASDAQ Market Makers Antitrust Litigation*, 176 F.R.D. 99, 102 (S.D.N.Y.
 18 1997). Application of these factors here support an order granting the motion for preliminary
 19 approval.

20 The approval of a proposed settlement of a class action is a matter of discretion for the trial
 21 court. *Churchill Village, supra*, 361 F.3d at 575. In exercising that discretion, however, courts
 22 recognize that as a matter of sound policy, settlements of disputed claims are encouraged and a
 23 settlement approval hearing should “not be turned into a trial or rehearsal for trial on the merits.”
 24 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied sub*
 25 *nom. Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). Furthermore, courts must give “proper
 26 deference” to the settlement agreement, because “the court’s intrusion upon what is otherwise a
 27 private consensual agreement negotiated between the parties to a lawsuit must be limited to the

1 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
 2 overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a
 3 whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d
 4 1011, 1027 (9th Cir. 1988) (quotations omitted).

5 To grant preliminary approval of this class action settlement, the Court need only find that
 6 the settlement falls within “the range of reasonableness.” *Newberg* § 11.25. *The Manual for*
 7 *Complex Litigation* (Fourth) (2004) (“*Manual*”) characterizes the preliminary approval stage as an
 8 “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of
 9 written submissions and informal presentation from the settling parties. *Manual* § 21.632. The
 10 *Manual* summarizes the preliminary approval criteria as follows:

11 Fairness calls for a comparative analysis of the treatment of the class
 12 members vis-à-vis each other and vis-à-vis similar individuals with
 13 similar claims who are not in the class. Reasonableness depends on
 14 an analysis of the class allegations and claims and the
 15 responsiveness of the settlement to those claims. Adequacy of the
 16 settlement involves a comparison of the relief granted to what class
 17 members might have obtained without using the class action
 18 process.

19 *Manual* § 21.62. A proposed settlement may be finally approved by the trial court if it is
 20 determined to be “fundamentally fair, adequate, and reasonable.” *City of Seattle*, 955 F.2d at
 21 1276. While consideration of the requirements for *final* approval is unnecessary at this stage, all
 22 of the relevant factors weigh in favor of the settlements proposed here.² Therefore, the Court
 23 should allow notice of the settlements to be disseminated to the Class.

24 **C. The Proposed Settlements Are Within The Range Of Reasonableness.**

25 _____
 26 The proposed settlements meet the standards for preliminary approval. These settlements
 27 are entitled to “an initial presumption of fairness” because they are the result of arm’s-length
 28 negotiations among experienced counsel. *Newberg* § 11.41. The monetary consideration,

2² Plaintiffs will address in detail each of the factors required for final settlement approval in their Motion for Final Approval of the Settlement, to be submitted following the issuance of notice to the class.

1 \$388,022,242 in cash, is substantial, particularly in light of the volume of Settling Defendants'
 2 sales in the United States, and the cooperation is important.

3 As described above, at the time of the mediations which led to these settlements,
 4 Defendants and Plaintiffs exchanged commerce information about panels and finished products
 5 which was often divergent. For most of the Settling Defendants, settlement negotiations were
 6 preceded by attempting to reconcile the differences. There were also differences related to what
 7 percentage of the finished product sales were attributable to the value of the panel contained
 8 therein. In some instances, Plaintiffs and Defendants were able to reconcile the baseline
 9 commerce numbers for settlement negotiations. In other instances, the difference was, at least,
 10 quantifiable so that it could be taken into account during the negotiations. Simon Decl., ¶ 31.

11 Again, as described in the procedural history section above, subsequent to the completion
 12 of the settlements at issue, the parties served expert reports. The report of Plaintiffs' damage
 13 expert, Dr. Edward Leamer of UCLA, was served on May 25, 2011, and the various defense
 14 reports were served in late July, 2011. Dr. Leamer served a reply report on August 29, 2011.
 15 Dr. Leamer's reports were based on the data produced and/or obtained in the litigation. The
 16 defense experts have argued that there are little or no damages, and have excluded from their
 17 analysis certain commerce than was conceded by the Settling Defendants in the negotiations. In
 18 analyzing the fairness of these settlements, the Court should consider that the Defendants are
 19 adamant that the subject conspiracy was ineffective and unsuccessful, and that the damages are
 20 very low, if non-existent.

21 In order to provide the Court with an understanding of the settlement amounts, the volume
 22 of commerce that was used for settlement purposes for each Settling Defendant is set forth below.
 23 The volume of commerce for the Settling Defendants is a subject of dispute between the parties
 24 and there were, in some instances, ranges in the parties' respective volume of commerce numbers.
 25 However, for purposes of settlement, the parties, in general, attempted to arrive at a volume of
 26 commerce number that was within the ranges of the respective parties. Moreover, of the
 27 commerce for all Defendants, including Non-Settling Defendants, almost 90% of the panel and
 28

1 over half of the finished product commerce opted out.³ In addition, by virtue of the class
 2 definitions, both panel sales between Defendants and internal transfers are also excluded. Lastly,
 3 Defendants may have viewed what they paid in settlement as a percentage of the volume of
 4 commerce from the standpoint of their exposure to joint and several liability, the evidence of their
 5 participation in the alleged conspiracy and other factors that were not necessarily communicated to
 6 Plaintiffs.

- 7 • The \$78,000,000 settlement amount from Chimei is compared to a commerce
 number of \$464 million that was used for settlement purposes. That settlement
 represents 17% of the volume of commerce. Simon Decl., ¶ 22.
- 8 • The \$14,900,000 settlement amount from HannStar is compared to a commerce
 number of \$27.5 million that was used by Plaintiffs for settlement purposes. That
 settlement represents 54% of that volume of commerce. *Id.*, ¶ 23.
- 9 • The \$28,000,000 settlement amount from Hitachi is compared to a commerce
 number of \$167 million that was used for settlement purposes. That settlement
 represents 16% of the volume of commerce. *Id.*, ¶ 24.
- 10 • The \$75,000,000 settlement amount from LG Display is compared a commerce
 number of \$200 million that was used for settlement purposes. That settlement
 represents 37% of the volume of commerce. *Id.*, ¶ 25.
- 11 • The settlement amount for Mitsui is \$950,000. Mitsui data did not show any sales
 to Class members during the Class Period. *Id.*, ¶ 26.
- 12 • The \$82,672,242 settlement amount from Samsung is compared to a commerce
 number of \$900 million that was used for settlement purposes. That settlement
 represents 9% of the volume of commerce. *Id.*, ¶ 27.
- 13 • The Settlement amount from Sanyo is \$3,500,000. The LCD assets of Sanyo CE
 were contributed to a joint venture between SANYO Electric Co., Ltd. and Seiko

26
 27 ³ For certain Defendants, the opt out percentages are higher.

1 Epson Imaging Devices (“SEID”) effective October 1, 2004. The joint venture was
 2 controlled by SEID (an Epson affiliate). Epson subsequently purchased the
 3 remaining interests of the joint venture in December 2006. All of the data and sales
 4 records pertaining to the LCD business were also transferred to Epson in October
 5 2004. Additionally, Sanyo CE sold most of its panels through trading companies in
 6 Japan. *Id.*, ¶ 28.

- 7 • The \$105,000,000 settlement amount from Sharp is compared to a commerce
 8 number of \$950 million which was used for settlement purposes. That settlement
 9 represents 11% of the volume of commerce. *Id.*, ¶ 29.
- 10 • The total average volume of commerce being settled as between Settling
 11 Defendants and Plaintiffs is \$2,708,500,000. The total settlements of \$388,022,242
 12 represents 14% of that amount. *Id.*, ¶ 30.⁴

13 These recoveries compare favorably to settlements approved in other price-fixing cases.

14 See, e.g., *In Re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M-02-1486
 15 PJH, slip. op. (N.D. Cal. Nov. 1, 2006) (approving settlements of 10.53% to 13.96% of sales); *In*
 16 *re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at *2 (E.D.
 17 Pa. May 11, 2004) (recovery represented approximately 2% of sales); *In re Linerboard Antitrust*
 18 *Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (granting final approval to settlement where
 19 recovery was 1.62% of sales); *In re Plastic Tableware Antitrust Litig.*, Case No. 94-CV-3564,
 20 1995 WL 723175, at *1 (E.D. Pa. Oct. 25, 1995) (granting final approval to settlement where
 21 recovery was 3.5% of sales); *In re Shopping Carts Antitrust Litig.*, 1983 WL 1950, at *9

22

23 ⁴ As set forth above, if the volume of commerce is viewed in the context of the Plaintiffs' and
 24 Defendants' expert reports, it is apparent that there are still significant disputes about the amount
 25 of commerce and damages. Using an average volume of commerce from the relevant expert
 26 reports, and doing the same percentage calculation as set forth above, the total settlements are just
 27 over 18% of that average commerce. Simon Decl., ¶ 30. Because the expert reports have been
 designated "Highly Confidential" under the Protective Order, these numbers are generally stated.
 If the Court would like more specific numbers, they would have to be submitted for *in camera*
 review or under seal. *Id.*

1 (S.D.N.Y. Nov. 18, 1983) (3% of sales); *Fisher Bros. v. Phelps Dodge Industries, Inc.*,
 2 604 F.Supp. 466, 451 (E.D. Pa. 1985) (3% of sales); *Fisher Bros. v. Mueller Brass Co.*,
 3 630 F.Supp. 493, 499 (E.D. Pa. 1985) (recoveries equal to 0.1%, 0.2%, 0.3%, 0.65%, 0.88%, and
 4 2.4% of defendants' total sales). Additionally, in *In re Rubber Chemicals Antitrust Litigation*, 232
 5 F.R.D. 346 (N.D. Cal. 2005), a horizontal price fixing case in which some of the defendants had
 6 entered guilty pleas in a related criminal proceeding, the Court, in the course of granting final
 7 approval of the settlement, characterized a settlement representing 4% of the defendants' sales as
 8 an "excellent recovery."

9 These settlements preserve Plaintiff's right to litigate against the non-settling defendants
 10 for the entire amount of Plaintiff's damages based on joint and several liability. *See In re*
 11 *Corrugated Container Antitrust Litig.*, Case No. M.D.L. 310, 1981 WL 2093, at *17 (S.D. Tex.
 12 June 4, 1981); Simon Decl., Exhs. B-I (Released claims do not preclude Plaintiffs from pursuing
 13 any and all claims against other defendants except settling defendant).⁵

14 Finally, the settlements call for all of the Settling Defendants to cooperate with Plaintiffs.
 15 This is a valuable benefit because it will save time, reduce costs, and provide access to
 16 information, witnesses, and documents regarding the TFT-LCD conspiracy that might otherwise
 17 not be available to Plaintiffs. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379,
 18 1386 (D. Md. 1983) (a defendant's agreement to cooperate with plaintiffs "is an appropriate factor
 19 for a court to consider in approving a settlement"). For all the aforementioned reasons, the
 20 proposed settlements are within the range of obtaining final approval as fair, reasonable, and
 21 adequate.

22 VI. **PROPOSED PLAN OF NOTICE**

23 Rule 23(e)(1) states that, "[t]he court must direct notice in a reasonable manner to all class

25 ⁵ See, e.g., Chimei Agreement, Exh. B at ¶14; HannStar Agreement, Exh. C at ¶ 14; Hitachi
 26 Agreement, Exh. D at ¶ 14; LG Display Agreement, Exh. E at ¶ 13; Mitsui Agreement, Exh. F at
 27 ¶ 14; Samsung Agreement, Exh. G at ¶14; Sanyo Agreement, Exh. H at ¶ 13; and, Sharp
 Agreement, Exh. I at ¶ 14.

1 members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”
 2 Notice of a proposed settlement must inform class members of the following: (1) the nature of the
 3 pending litigation; (2) the general terms of the proposed settlement; (3) that complete information
 4 is available from the court files; and (4) that any class member may appear and be heard at the
 5 fairness hearing. *See Newberg* § 8.32. The notice must also indicate that the court will exclude
 6 from the class any member who requests exclusion, that the judgment will bind all class members
 7 who do not opt-out, and that any member who does not opt-out may appear through counsel. Fed.
 8 R. Civ. P. 23(c)(2)(B).

9 A. The Notice Plan Is The Same One Used To Notify The Class Of The
 10 Chunghwa And Epson Settlements And The Certified Classes.

11 Plaintiffs propose that the notice plan adopted and approved by the Court include:

12 1. direct notice given by mail or email to each class member identified by
 13 reasonable effort;

14 2. a summary notice published in the national edition of The Wall Street
 15 Journal; and,

16 3. the posting of both forms of notice on a public website maintained by the
 17 notice provider.

18 A formal fairness hearing, also called the final approval hearing, at which class members
 19 may be heard regarding the settlements, and at which counsel may introduce evidence and present
 20 argument concerning the fairness, adequacy, and reasonableness of the settlements.

21 This is the same plan of notice that the Court approved for notifying the Classes of the
 22 class certification and settlements with Epson and Chunghwa. Simon Decl., ¶ 34. Moreover,
 23 Plaintiffs now have a list of class members used for the previous notice which should make
 24 dissemination of the notice easier this time. Furthermore, many class members registered on-line
 25 with the Claims Administrator, allowing email notification.

26 The content of the proposed Class Notice, which consists of a summary notice and a long
 27 form notice, fully complies with due process and Rule 23. (The proposed summary and long form

1 notices are attached to the Simon Decl. as Exhibits J and K.) It provides the definition of the
 2 class, describes the nature of the settlements, explains the procedure for making comments and
 3 objections, and contains contact information to pose any questions. The Class Notice describes
 4 the terms of the settlements with the Settling Defendants, and informs class members of the
 5 proposed plan of distribution. The Class Notice provides the date, time, and place of the final
 6 approval hearing, and informs class members that they may enter an appearance through counsel.
 7 The Class Notice also informs class members how to exercise their rights, including to comment
 8 on or object to the settlements, and make informed decisions regarding the proposed settlement,
 9 and that the judgment will be binding upon them. The Class Notice further informs the class
 10 about the request for payment of Plaintiffs' attorneys' fees and costs. Finally, the Class Notice
 11 advises class members regarding the dismissal without prejudice of Tatung Corporation of
 12 America, Inc. in case any class members choose to pursue claims against that defendant
 13 individually.

14 B. The Form Of Notice Should Be Approved.

15 The form of notice is "adequate if it may be understood by the average class member."
 16 *Newberg* § 11.53. Notice to the class must be "the best notice practicable under the
 17 circumstances, including individual notice to all members who can be identified through
 18 reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997). Publication notice is
 19 an acceptable method of providing notice where the identity of specific class members is not
 20 reasonably available. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal.
 21 2007) (citing *Manual* § 21.311). The Notice here, which is modeled on the previously-approved
 22 Notice, is understandable. Notice having already been sent once, the Class members' addresses
 23 are as updated and verified as possible.

24 C. The Class Members Should Not Be Given Another Opportunity To Opt Out.

25 There is no need for another opt-out period. Fed. R. Civ. P. 23(e) states that "[t]he claims,
 26 issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only
 27 with the court's approval." Subsection (e)(4) states "[i]f the class action was previously certified
 28

1 under Rule 23(b)(3), the court *may* refuse to approve a settlement unless it affords a new
 2 opportunity to request exclusion to individual class members who had an earlier opportunity to
 3 request exclusion but did not do so.” Fed. R. Civ. P. 23(e)(4) (emphasis added). However,
 4 Rule 23(e)(4)’s plain language is permissive and courts have regularly found that class members
 5 do not have to be afforded successive opportunities to opt out of settlements if they have had a
 6 previous chance to opt out but not done so. *See Class Notices of Class Action Settlements issued*
 7 *in In re Dynamic Random Access Memory (DRAM) Antitrust Litigation* (N.D. Cal.) Case No. M-
 8 02-1486-PJH (JCS)) (Simon Decl., ¶ 35, Exhs. L, M, and N) (right to opt out in first notice, but no
 9 right to opt out of two subsequent settlements.)

10 “In a class action, once the district court certifies a class under Rule 23, all class members
 11 are bound by the judgment unless they opt out of the suit.” *McElmurry v. U.S. Bank Nat. Ass’n*,
 12 495 F.3d 1136, 1139 (9th Cir. 2007). Once a court has conducted a fairness hearing and entered a
 13 judgment approving a settlement agreement, any class members, who did not opt out by the initial
 14 opt out date, are legally bound to the terms of the settlement. Fed. R. Civ. P. 23(e)(2). Of course,
 15 “[a]ny class member may object to the proposal if it requires court approval under this subdivision
 16 (e).” Fed. R. Civ. P. 23(e)(5).

17 The Ninth Circuit has held that an objection based on the settlement agreement not
 18 allowing class members a second chance to opt out is insufficient to disrupt the settlement. In
 19 *Officers for Justice v. Civil Serv. Comm’n of City & County of San Francisco*, the Ninth Circuit
 20 held, that neither Rule 23(b)(3) nor due process required a second opt out period. 688 F.2d 615
 21 (9th Cir. 1982).

22 . . . we have found no authority of any kind suggesting that due
 23 process requires that members of a Rule 23(b)(3) class be given a
 24 second chance to opt out. We think it does not. [Objector’s]rights
 25 are protected by the mechanism provided in the rule: approval by
 26 the district court after notice to the class and a fairness hearing at
 27 which dissenters can voice their objections, and the availability of
 28 review on appeal. Moreover, to hold that due process requires a
 second opportunity to opt out after the terms of the settlement have
 been disclosed to the class would impede the settlement process so
 favored in the law. “(A)llowing objectors to opt out would
 discourage settlements because class action defendants would not be
 inclined to settle where the result would likely be a settlement

1 applicable only to class members with questionable claims, with
 2 those having stronger claims opting out to pursue their individual
 3 claims separately.” *Kincade v. General Tire & Rubber Co.*,
 4 635 F.2d 501, 507 (5th Cir. 1981).

5 *Officers for Justice, supra*, 688 F.2d at 635. Aside from disrupting the ability of parties to settle,
 6 requiring successive opt out periods for each settlement would undermine the finality of class
 7 certification.

8 Neither due process nor Rule 23(e)(3) requires, however, a second
 9 opt-out period whenever the final terms change after the initial opt-
 10 out period. Requiring a second opt-out period as a blanket rule
 11 would disrupt settlement proceedings because no certification would
 12 be final until after the final settlement terms had been reached. As
 13 the Advisory Committee Notes make clear, ‘Rule 23(e)(3)
 14 authorizes the court to refuse to approve a settlement unless the
 15 settlement affords a new opportunity to elect exclusion in a case that
 16 settles after a certification decision . . .’ Adv. Comm. 2003 Notes to
 17 Fed.R.Civ.P. 23(e)(3). However, the court is under no obligation to
 18 do so: The decision whether to approve a settlement that does not
 19 allow a new opportunity to elect exclusion is confided to the court’s
 20 discretion.

21 *Denney v. Deutsche Bank AG*, 443 F.3d 253, 271 (2d Cir. 2006) (citations and quotation omitted).

22 Therefore, although a judge may consider whether fairness merits allowing class members
 23 a second chance to opt out, neither the court nor the settling parties are required to provide such an
 24 opportunity. *See Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 663 (N.D. Tex. 2010), judgment
 25 entered (June 18, 2010), as modified (June 14, 2010) (“Under Rule 23(e)(4), the decision whether
 26 to allow a second opt out is left to the court’s discretion.”) (citation and quotation omitted).
 27 Because the class members here were previously given an opportunity to opt out, the Court should
 28 not allow an additional opportunity.

23 **VII. PROPOSED PLAN OF ALLOCATION**

24 A plan of allocation of class settlement funds is subject to the “fair, reasonable and
 25 adequate” standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*,
 26 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). A plan of allocation that compensates class
 27 members based on the type and extent of their injuries is generally considered reasonable. Here,

1 the distribution will be on a *pro rata* basis, with no class members being favored over others.

2 This type of distribution has frequently been determined to be fair, adequate, and
 3 reasonable. *See DRAM, supra* (Doc. No. 2093, p. 2) (Oct. 27, 2010) (Order Approving Pro Rata
 4 Distribution); *In re Vitamins Antitrust Litig.*, 2000 WL 1737867 at *6 (D.D.C. Mar. 31, 2000)
 5 (“Settlement distributions, such as this one, that apportions funds according to the relative amount
 6 of damages suffered by class members, have repeatedly been deemed fair and reasonable.”); *In re*
 7 *Lloyds' Am. Trust Fund Litig.*, 2002 WL 31663577 at *19 (S.D.N.Y. Nov. 26, 2002) (“*pro rata*
 8 allocations provided in the Stipulation are not only reasonable and rational, but appear to the
 9 fairest method of allocating the settlement benefits.”); *In re Paine Webber Partnership Litigation*,
 10 171 F.R.D. 104 at 135 (S.D.N.Y. 1997) (“pro rata distribution of the Settlement on the basis of
 11 Recognized Loss will provide a straightforward and equitable nexus for allocation and will avoid a
 12 costly, speculative and bootless comparison of the merits of the Class Members’ claims”).

13 The proposed plan of allocation here divides the settlement fund so that 50% of the fund
 14 will be distributed to members of the Panel Class and 50% of the fund will be distributed to
 15 members of the Finished Product Class. The mix of finished products and panel commerce left in
 16 the case after opt-outs is different for each defendant. Some defendants, like LG Display, only
 17 sold panels, and others sold both. After reviewing the relevant commerce, in recognition of joint
 18 and several liability, and after weighing the litigation risks associated with each sub-class, the
 19 most equitable allocation is that the sub-classes share equally on a *pro rata* basis. Simon Decl.,
 20 ¶ 36.

21 For each TFT-LCD finished product (monitors, notebook computers, and televisions),
 22 claimants will be paid based on the value of the panel in the finished product. The total panel
 23 value is divided by the total finished product revenue for each product type for each Defendant
 24 during the class period. This ratio is an estimate of TFT-LCD panel value as a percentage of the
 25 Defendants’ finished product sales. The percentages of estimated panel value in a finished
 26 product are 75% for monitors, 15% for notebook computers, and 47% for televisions. In other
 27 words, a panel claimant will be paid *pro rata* in proportion to its claim as compared to the other

28

1 panel claimants from 50% of the settlement proceeds. A finished product claimant will be paid
 2 *pro rata* from the other 50% of the settlement proceeds, based on the percentage of panel value
 3 attributable to the product in the claim. *Id.*, ¶ 37.⁶ The proposed Claim Form is attached to the
 4 Simon Declaration as Exhibit O.

5 In summary, class members will submit their purchase information for both panels and
 6 finished products. The panel purchase prices, based on prices paid, will be divided *pro rata*. For
 7 finished products, the claims administrator will apply the percentages set forth above (as
 8 potentially refined by further analysis during the claims administration period), and then calculate
 9 class members' *pro rata* distribution based on those percentages. *Id.*, ¶ 38.

10 This proposed plan of allocation is based on an analysis of an expert who estimated the
 11 percentage value of TFT-LCD panels in Defendants' sales on TFT-LCD monitors, notebook
 12 computers, and TFT-LCD televisions to the class members. He utilized a dataset created from the
 13 sales transaction data produced by Defendants in this case. The dataset was created using
 14 Defendants' worldwide TFT-LCD panel sales data and U.S. finished product sales data, as well as
 15 other information collected from Defendants. Simon Decl., ¶ 39.

16 **VIII. ATTORNEYS' FEES AND COSTS**

17 The Agreements state that Class Counsel may apply to the Court for an award of attorneys'
 18 fees, reimbursement of costs, and payment of incentive awards to class representatives, out of the
 19 settlement fund, and Settling Defendants have agreed not to oppose any such request. Prior to the
 20 final approval hearing, plaintiffs and their counsel will move for an award of attorneys' fees to be
 21 paid from the Settlement Fund in an amount not to exceed one-third (33.33%) of the Settlement
 22 Fund's total value. Additionally, the motion will ask for an award of fees as not to exceed one-
 23 third of the \$17,000,000 settlement fund from the previous settlements with the Chunghwa and
 24

25
 26⁶ The Chunghwa settlement includes purchases from July 1, 1996 through December 11, 2006 for
 27 panels and any product containing a TFT-LCD panel. Claims associated with these purchases will
 be addressed in the claim administration process and may be subject to a further allocation
 depending on the amount of claims submitted.

1 Epson Defendants, pursuant to the prior notice sent to class members (dated October 6, 2010).

2 The proposed notice will explain the forthcoming motion for attorneys' fees and reimbursement of

3 costs so that class members will be aware of the proposed requests. The motion for attorneys' fees

4 and reimbursement of costs will be filed a reasonable time before the date for objections. *See In*

5 *re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010) (Plaintiffs must have

6 adequate time to review motion for attorneys' fees before deadline for objections).

IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING SCHEDULE

The last step in the settlement approval process is the final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed settlements. At that hearing, proponents of the settlements may explain and describe their terms and conditions and offer argument in support of settlement approval. Members of the settlement class, or their counsel, may be heard in support of or in opposition to the settlement. Plaintiffs propose the following schedule for final approval of the settlement:

	Date	Action
14	1. Within 30 days after preliminary approval is granted	Mailing and publication of Class Notice
15	2. 45 days after Notice published	Deadline to comment on or object to settlement
16	3. 75 days after Notice published	Final Settlement Approval Hearing/Fairness Hearing

19 This proposed schedule compares favorably to the schedule approved by the Court
20 previously when it preliminarily approved the Chunghwa and Epson settlements.

21 Notice: November 5, 2010

22 Deadline to opt-out and/or object: January 4, 2011 (60 days)

24 The Court should therefore approve the proposed schedule.

25 X. CONCLUSION

26 Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary
27 approval of the class settlements with defendants Chimei, HannStar, Hitachi, LG Display, Mitsui,

1 Samsung, Sanyo, and Sharp; approve the proposed long and short form notices; establish a
2 deadline for class members to submit any objections to the settlement; approve the proposed claim
3 form; preliminarily approve the plan of allocation; and, set a final approval hearing date.

4

5

Respectfully submitted,

6

DATED: August 30, 2011

PEARSON, SIMON, WARSHAW & PENNY, LLP

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8

By: _____ /s/ *Bruce L. Simon*
BRUCE L. SIMON

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*Co-Lead Counsel for the Direct Purchaser Class
Plaintiffs*

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By: _____ /s/ *Richard M. Heimann*
RICHARD M. HEIMANN

*Co-Lead Counsel for the Direct Purchaser Class
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